



November 2, 2000

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2000-4275

Dear Ms. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141068.

The Texas Lottery Commission (the "commission") received a request for information submitted by companies bidding to provide security services to the commission. You inform us that two bidders, Ameritex Guard Services ("Ameritex") and Burns International Services Corporation ("Burns") have objected to the release of their proposal information, claiming that the information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ You raise no exception to disclosure on behalf of the commission, and make no arguments regarding the proprietary nature of the submitted information.

Pursuant to section 552.305 of the Government Code, you notified Ameritex and Burns that the commission had received a public information request for their proposal information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). As of this date, we have not received any comments from Ameritex regarding the proprietary nature of their information.

¹Burns claims that only a portion of the information they submitted to the commission is excepted from disclosure. We assume that you have released to the requestor the remaining information the commission received from Burns.

The commission provided this office with a statement from Burns asserting that the list of references provided to the commission is "confidential and proprietary" and that the "release of this information would be detrimental to our business." After careful review, we do not believe this statement is sufficient to show that the information is excepted from disclosure pursuant to section 552.110 of the Government Code. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, none of the information of either Burns or Ameritex may be withheld from public disclosure under section 552.110.

You inform us that both Ameritex and Burns assert that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Neither the commission nor the third parties has specifically identified a constitutional provision, statute, or judicial decision which makes the information confidential by law. Accordingly, you may not withhold the submitted information under section 552.101. In summary, the commission must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 141068

Encl. Submitted documents

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